

# CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

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RICHARD S. SIMMONS  
WAYNE E. CHAPMAN  
THOMAS D. BARR  
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DAVID L. SCHWARTZ  
RICHARD J. HIEGEL

CHRISTINE BESHAR  
ROBERT S. RIFKIND  
DAVID BOIES  
DAVID O. BROWNWOOD  
PAUL M. DODYK  
RICHARD M. ALLEN  
THOMAS R. BROME  
ROBERT D. JOFFE  
ROBERT F. MILLER  
ALLEN FINKEL  
RONALD S. ROLFE  
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PAUL C. SAUNDERS  
MARTIN L. SENGEL  
DOUGLAS D. BROADWATER  
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JOSEPH A. MULLINS  
MAX R. SHULMAN  
WILLIAM P. DICKEY  
STUART W. GOLD  
JOHN W. WHITE  
JOHN E. BEERHOWER

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RECORDATION NO. 13602  
Filed 1425

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INTERSTATE COMMERCE COMMISSION

COUNSEL  
JURICE T. MOORE  
FRANCIS F. RANDOLPH, JR.

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RECORDATION NO. 13602  
Filed 1425

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INTERSTATE COMMERCE COMMISSION

2-081A074

No.

Date

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Washington, D. C. 20540  
RECORDATION NO. 13602  
Filed 1425

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INTERSTATE COMMERCE COMMISSION

Chemical Company Lease Financing  
Dated as of January 15, 1982  
17-1/4% Conditional Sale Obligations  
Due January 2, 2002

Dear Madam:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of The Dow Chemical Company for filing and recordation counterparts of the following documents:

(1)(a) Conditional Sale Agreement dated as of January 15, 1982, between The Connecticut Bank and Trust Company, as Trustee and Procor Limited, as Builder;

(b) Agreement and Assignment dated as of January 15, 1982, between Mercantile-Safe Deposit and Trust Company, as Assignee, and Procor Limited, as Builder;

(2)(a) Lease of Railroad Equipment dated as of January 15, 1982, between The Dow Chemical Company, as Lessee, and The Connecticut Bank and Trust Company, as Lessor; and

(b) Assignment of Lease and Agreement dated as of January 15, 1982, between The Connecticut Bank and Trust Company, as Vendee, and Mercantile-Safe Deposit and Trust Company, as Agent.

*Carlucci* *Al Borch*

The names and addresses of the parties to the  
aforementioned Agreements are as follows:

(1) Agent:

Mercantile-Safe Deposit and Trust Company  
Two Hopkins Plaza,  
Baltimore, Maryland 31203.

(2) Lessee:

The Dow Chemical Company  
2030 Dow Center,  
Midland, Michigan 48640.

(3) Builder:

Procor Limited  
2001 Speers Avenue,  
Oakville, Ontario L6J 5E1

(4) Trustee-Lessor:

The Connecticut Bank and Trust Company,  
One Constitution Plaza,  
Hartford, Connecticut 06115.

Please file and record the documents referred to  
in this letter and index them under the names of the  
Trustee-Lessor, Lessee, Builder and Agent.

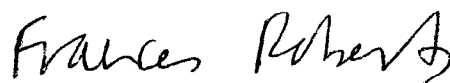
The equipment covered by the aforementioned Agree-  
ment appears in Exhibit A attached hereto and also bears the  
legend "Ownership Subject to a Security Agreement Filed with  
the Interstate Commerce Commission".

There is also enclosed a check for \$100 payable to  
the Interstate Commerce Commission representing the required  
recordation fee.

Please stamp all counterparts of the enclosed  
Agreements with your official recording stamp. You will  
wish

to retain one copy of the instrument for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

A handwritten signature in cursive script, reading "Frances Roberts".

Frances Roberts  
As Agent for The Dow  
Chemical Company

Agatha L. Mergenovich,  
Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423.

Encls.

13602-<sup>A</sup>  
RECORDATION NO. .... Filed 1425

MAR 22 1982 -2 35 PM  
INTERSTATE COMMERCE COMMISSION

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[CS&M Ref: 3626-020]

AGREEMENT AND ASSIGNMENT

Dated as of January 15, 1982

between

PROCOR LIMITED

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,

as Assignee

---

AGREEMENT AND ASSIGNMENT dated as of January 15, 1982, between PROCOR LIMITED ("Builder") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Participation Agreement dated as of the date hereof ("Assignee").

WHEREAS the Builder and The Connecticut Bank and Trust Company, as Trustee ("Vendee"), under a Trust Agreement dated as of the date hereof ("Trust Agreement"), with New England Merchants Leasing Corporation B-10 have entered into a Conditional Sale Agreement dated as of the date hereof ("CSA") covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Vendee of the railroad equipment described in Annex B to the CSA ("Equipment"); and

WHEREAS the Vendee and The Dow Chemical Company ("Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT ("Assignment") WITNESSETH: that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of the Equipment manufactured by it when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to the Builder of the amount required to be paid pursuant to Section 4 hereof and of the amounts due to the Builder under the CSA;

(b) all the right, title and interest of the Builder in and to the CSA (except the right to construct and deliver the Equipment, the right to receive the payments specified in subparagraph (a) of the third para-

graph of Article 4 thereof, the indemnity of the Builder pursuant to Article 13 of the CSA and reimbursement for taxes paid or incurred by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA), of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all the Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 13 of the CSA or relieve the Vendee from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 of the CSA. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the CSA and will deliver the same upon completion to the Vendee in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment manufactured by it under the CSA it had legal

title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature arising from, through or under the Builder except only the rights of the Vendee under the CSA and the rights of the Lessee under the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims arising from, through, or under the Builder originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Vendee thereunder. The Builder will not deliver any of the Equipment to the Vendee under the CSA until the CSA and the Lease have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing has occurred).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment manufactured by it or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by the Builder of any obligation with respect to such Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Vendee or the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment manufactured by the Builder of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount in Canadian dollars equal to the portion of the Purchase Price thereof which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from the Builder of the units being settled for to the Assignee transferring to the Assignee the security interest of the Builder in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the CSA, the Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature arising from, through or



under the Builder except only the rights of the Vendee under the CSA and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims arising from, through or under the Builder originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the CSA and § 2 of the Lease;

(c) an invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for the Builder, dated as of such Closing Date, addressed to the Assignee and the Vendee, to the effect that under the laws of the Province of Ontario the aforesaid bill or bills of sale have been duly authorized, executed and delivered by the Builder and are valid and effective to vest in the Assignee the security interest of the Builder in the units of the Equipment in such Group, free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and the rights of the Lessee under the Lease) arising from, through or under the Builder; and

(e) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the CSA. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of

the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the CSA was duly authorized by it and lawfully executed and delivered by it, that, assuming due authorization, execution and delivery by the Vendee, the CSA is, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon and enforceable against the Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee by the Builder or intended so to be; and

(c) agrees that, upon payment in full to the Builder and at the request of the Assignee or the Vendee, or their successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Connecticut; provided, however, that

the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing, recording or deposit of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the markings on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, Procor Limited has caused its corporate seal to be affixed hereunto duly attested by the hands of its authorized signing officers in that behalf at the Town of Oakville, in the Regional Municipality of Halton in the Judicial District of Halton, in the Province of Ontario as of the date first above written.

PROCOR LIMITED,

Per: 

Gordon Clifford Mills,  
Vice President and  
General Manager  
RAIL CAR DIVISION

Per: 

William Elmer McDougall  
~~Assistant~~ Secretary and  
Assistant Treasurer

IN WITNESS WHEREOF, the Mercantile-Safe Deposit and Trust Company, pursuant to due corporate authority, has caused this instrument to be executed in its corporate name by a duly authorized official, and its corporate seal to be hereunto affixed and duly attested, all as of the date first above written.

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent,

by

Assistant Vice President

[Corporate Seal]

Attest:

Assistant Corporate Trust Officer

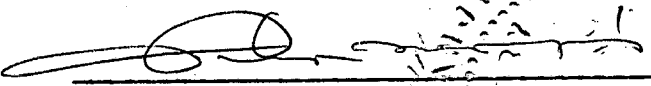
CANADA )

PROVINCE OF ONTARIO )

JUDICIAL DISTRICT OF HALTON )

TO WIT: )

On this 17<sup>th</sup> day of *March* 1982, at the Town of Oakville, in the Regional Municipality of Halton, in the Province of Ontario, Canada, before me personally appeared Gordon Clifford Mills and William Elmer McDougall, each to me personally known, who, being duly sworn, say that they are respectively Vice President and General Manager, Rail Car Division; and ~~Assistant~~ Secretary and Assistant Treasurer of PROCOR LIMITED, and that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

  
Barrister and Solicitor,  
Commissioner and Notary Public  
for taking Affidavits in and  
for the Province of Ontario,  
Canada

My Commission expires  
at the pleasure of Her  
Majesty The Queen in the  
right of the Province of  
Ontario, Canada.

STATE OF MARYLAND, )

) SS.:

CITY OF BALTIMORE, )

On this                      day of                      1982, before me personally appeared                      , to me personally known, who being by me duly sworn, says that he is an Assistant Vice President of Mercantile-Safe Deposit and Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of January 15, 1982.

THE CONNECTICUT BANK AND TRUST  
COMPANY, as Trustee,

by

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Authorized Officer

---

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[CS&M Ref: 3626-020]

AGREEMENT AND ASSIGNMENT

Dated as of January 15, 1982

between

PROCOR LIMITED

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,

as Assignee

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---



AGREEMENT AND ASSIGNMENT dated as of January 15, 1982, between PROCOR LIMITED ("Builder") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Participation Agreement dated as of the date hereof ("Assignee").

WHEREAS the Builder and The Connecticut Bank and Trust Company, as Trustee ("Vendee"), under a Trust Agreement dated as of the date hereof ("Trust Agreement"), with New England Merchants Leasing Corporation B-10 have entered into a Conditional Sale Agreement dated as of the date hereof ("CSA") covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Vendee of the railroad equipment described in Annex B to the CSA ("Equipment"); and

WHEREAS the Vendee and The Dow Chemical Company ("Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT ("Assignment") WITNESSETH: that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of the Equipment manufactured by it when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to the Builder of the amount required to be paid pursuant to Section 4 hereof and of the amounts due to the Builder under the CSA;

(b) all the right, title and interest of the Builder in and to the CSA (except the right to construct and deliver the Equipment, the right to receive the payments specified in subparagraph (a) of the third para-

graph of Article 4 thereof, the indemnity of the Builder pursuant to Article 13 of the CSA and reimbursement for taxes paid or incurred by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA), of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all the Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 13 of the CSA or relieve the Vendee from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 of the CSA. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the CSA and will deliver the same upon completion to the Vendee in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment manufactured by it under the CSA it had legal

title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature arising from, through or under the Builder except only the rights of the Vendee under the CSA and the rights of the Lessee under the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims arising from, through, or under the Builder originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Vendee thereunder. The Builder will not deliver any of the Equipment to the Vendee under the CSA until the CSA and the Lease have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing has occurred).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment manufactured by it or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by the Builder of any obligation with respect to such Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Vendee or the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment manufactured by the Builder of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount in Canadian dollars equal to the portion of the Purchase Price thereof which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from the Builder of the units being settled for to the Assignee transferring to the Assignee the security interest of the Builder in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the CSA, the Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature arising from, through or

under the Builder except only the rights of the Vendee under the CSA and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims arising from, through or under the Builder originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the CSA and § 2 of the Lease;

(c) an invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for the Builder, dated as of such Closing Date, addressed to the Assignee and the Vendee, to the effect that under the laws of the Province of Ontario the aforesaid bill or bills of sale have been duly authorized, executed and delivered by the Builder and are valid and effective to vest in the Assignee the security interest of the Builder in the units of the Equipment in such Group, free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and the rights of the Lessee under the Lease) arising from, through or under the Builder; and

(e) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the CSA. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of

the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the CSA was duly authorized by it and lawfully executed and delivered by it, that, assuming due authorization, execution and delivery by the Vendee, the CSA is, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon and enforceable against the Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee by the Builder or intended so to be; and

(c) agrees that, upon payment in full to the Builder and at the request of the Assignee or the Vendee, or their successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Connecticut; provided, however, that

the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing, recording or deposit of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the markings on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, Procor Limited has caused its corporate seal to be affixed hereunto duly attested by the hands of its authorized signing officers in that behalf at the Town of Oakville, in the Regional Municipality of Halton in the Judicial District of Halton, in the Province of Ontario as of the date first above written.

PROCOR LIMITED,

Per: \_\_\_\_\_  
Gordon Clifford Mills,  
Vice President and  
General Manager

Per: \_\_\_\_\_  
William Elmer McDougall  
Assistant Secretary and  
Assistant Treasurer

IN WITNESS WHEREOF, the Mercantile-Safe Deposit and Trust Company, pursuant to due corporate authority, has caused this instrument to be executed in its corporate name by a duly authorized official, and its corporate seal to be hereunto affixed and duly attested, all as of the date first above written.

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent,

by

  
Assistant Vice President

[Corporate Seal]

Attest:

  
Assistant Corporate Trust Officer



CANADA )  
 )  
PROVINCE OF ONTARIO )  
 )  
JUDICIAL DISTRICT OF HALTON )  
 )  
TO WIT: )

On this       day of       1982, at the Town of Oakville, in the Regional Municipality of Halton, in the Province of Ontario, Canada, before me personally appeared Gordon Clifford Mills and William Elmer McDougall, each to me personally known, who, being duly sworn, say that they are respectively Vice President and General Manager, Rail Car Division; and Assistant Secretary and Assistant Treasurer of PROCOR LIMITED, and that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

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Barrister and Solicitor,  
Commissioner and Notary Public  
for taking Affidavits in and  
for the Province of Ontario,  
Canada

My Commission expires  
at the pleasure of Her  
Majesty The Queen in the  
right of the Province of  
Ontario, Canada.


STATE OF MARYLAND,)

) SS.:

CITY OF BALTIMORE, )

On this 15<sup>th</sup> day of March 1982, before me personally appeared R. E. Schreiber, to me personally known, who being by me duly sworn, says that he is an Assistant Vice President of Mercantile-Safe Deposit and Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

on.

  
Notary Public

[Notarial Seal]

My Commission expires 7-1-82

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of January 15, 1982.

THE CONNECTICUT BANK AND TRUST  
COMPANY, as Trustee,

by

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Authorized Officer